Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-768

CLARENCE BROWN,

Petitioner,

v.

GENERAL SERVICES ADMINISTRATION, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 20, 1974
CERTIORARI GRANTED MAY 27, 1975

MERLIN PRESS INC.—N. Y. C. 219

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Relevant Docket Entries

DATE	PROCEEDINGS
May 7, 1973	Complaint filed and summons.
July 27, 1973	Filed notice of motion ret. Aug. 10-73 at 2:15 p.m. Room 1106; Re. dismissing the complaint.
September 18, 1973	Filed pltff's notice of motion for leave to file an amended complaint and to add parties-ret. 9-21-73.
September 27, 1973	Filed memo endorsed on government's motion filed 7-27-73—See memorandum decision of this date granting the within motion—MacMahon, J.
September 27, 1973	Filed memo endorsed on pltff's motion to amend filed 9-18-73—The within application to amend the complaint and add parties is denied because this action has been dismissed for want of subject matter jurisdiction, and the proposed amended complaint does not change the situation. See memorandum decision of this date granting defts' motion to dismiss the complaint-So ordered-MacMahon, J. —m.n.
September 27, 1973	Filed memorandum decision—This court lacks subject matter jurisdiction over this action, and deft's mo-

Relevant Docket Entries

DATE	PROCEEDINGS
	tion to dismiss the complaint, pursuant to Rule 12(b), Fed.R.Civ.P., is granted. So ordered—MacMahon, J.—mailed notice.
September 28, 1973	Filed Judgment—defts. have judgment against the pltff. dismissing the complaint—Judgment entered—Clerk—mailed notice ent. 10-1-73
October 24, 1973	Filed pltff's notice of appeal—from final judgment filed 9-28-73—mailed copy to U.S. Attorney.

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 73 Civ. 2026

CLARENCE BROWN,

Plaintiff,

—against—

GENERAL SERVICES ADMINISTRATION, UNITED STATES OF AMERICA, TRANSPORTATION AND COMMUNICATIONS SERVICE, COMMUNICATIONS DIVISION, REGION 2, JOSEPH A. DALY, Regional Director, Transportation and Communications Service, ALBERT GALLO, Chief, Communications Division and FRANK A. LAPOLLA, Acting Chief, Communications Division, Transportation and Communications Service, Region 2,

Defendants.

COUNT I

Jurisdiction of this Court is invoked pursuant to Title VII of the Civil Rights Act of 1964; 28 U.S. Code, §1331, et seq. and the Equal Employment Opportunity Act of 1972 [hereinafter sometimes referred to as "The 1972 Act"], with particular reference to §717 of the 1972 Act, covering discrimination in federal employment. Jurisdiction is specifically enlarged by the said 1972 Act and conferred upon this Court by 42 U.S. Code §2000e-5(g) and 28 U.S. Code §§2201 and 2202. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights

secured by (a) 42 U.S. Code §§2000e et seq., providing for injunctive and other relief against racial discrimination in employment and (b) 42 U.S. Code §1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States.

COUNT II

Paintiff is a citizen of the United States and resides at 468 Ralph Street, Franklin Township, Somerset, New Jersey. He is a Negro, or black.

(b) The defendants have their place of business at 26 Federal Plaza, in the City, County and State of New York, known as Region 2 of the General Services Administration of the United States Government.

(c) Plaintiff was employed in the title and grade of Communications Specialist, GS 7, under the immediate supervision of the defendant, Albert Gallo, Chief, Communications Division, Transportation and Communications Service, Region 2.

COUNT III

Nature of Proceeding

This is a proceeding alleging racial discrimination by the defendants Joseph A. Daly, Albert Gallo and Frank A. Lapolla, as the plaintiff's superiors at Region 2 of the General Services Administration. The General Services Administration has been joined as a party defendant because it tolerated the alleged racial discrimination to exist and to continue to exist, despite the complaints of the plaintiff hereinafter referred to and described. The United States Civil Service Commission has been joined as a party

defendant because, in entertaining and ruling upon the plaintiff's complaint of racial discrimination, it acted in an arbitrary and capricious manner by failing to make the in-depth inquiry into the alleged racial discrimination as, under the said Civil Rights Act of 1964 and the Act as amended in 1972, it was required to do. It will not be claimed that the alleged racial discrimination was against Negro employees as a class, but only that it was improperly, unlawfully and illegally exercised against the plaintiff, as a black man with individualistic and distinctive qualities which the defendants found offensive only because the plaintiff is a Negro and black and because such individualistic qualities did not fit the stereotypical qualities which the defendants, who are white, expected in a black man and an American citizen. It is further contended that the conduct of the individual defendants discriminated against the plaintiff racially and in ways which deprived the plaintiff of equal employment opportunities and otherwise adversely affected plaintiff's former status as an employee of the General Services Administration, by delimiting and preventing his promotion in said employment, despite the plaintiff's merit qualifications and his seniority as an employee of the said Governmental agency for upwards of fifteen years.

Plaintiff claims that his denial of promotion and his eventual departure from the Agency were retaliatory in nature and based primarily upon his race and color and an attitude of distinctive manliness which in no way detracted from the superior merit of his work.

COUNT IV

Nature of Racial Discrimination

The particular nature of the racial discrimination here claimed, all to the detriment, deprivation and loss of the plaintiff's civil rights, is that the plaintiff was deprived of merited and earned promotion by the following several circumstances, to wit:

(a) The individual defendants, acting for and in the Communications Division of the Transportation and Communications Service, entered into secret and illegal agreements in and among themselves, to establish a promotional system especially geared to the plaintiff, with the design, intent and purpose which is to continue and preserve, and which has the effect of continuing and preserving an illegal, improper, arbitrary and capricious policy, practice, custom and usage, against the plaintiff of limiting, cutting off, annulling and destroying the promotional opportunity of the plaintiff solely on the basis of his race and color. Those discriminatory policies and practices are described as follows:

(i) In June, 1971, plaintiff, although well qualified and with seniority, was not selected for promotion to the title of GS-9. It is alleged that he was deliberately passed over. At that time, the asserted reason for his non-promotion was that there was a "voice" deficiency, that is, that the plaintiff lacked "voice experience." After plaintiff filed an administrative complaint because of his non-selection for promotion in 1971, he was duped and tricked into believing that "lack of voice experience" was the true, real and genuine reason for his non-selection by the defendant Gallo, and plaintiff discontinued his complaint.

(ii) Thereafter, plaintiff acquired full voice experience and when another opening for the title GS-9 arose, plaintiff applied for said promotion, again, on the basis of his qualifications, his seniority and his acquisition of voice experience. Again, the plaintiff was passed over, with the alleged excuse, reason or subterfuge being given that plaintiff had not been "co-operative" on an occasion wholly unrelated to any performance of his job title or the title of GS-9, which said reason was not a true and genuine reason, but which was advanced and given to cloak and obscure a prohibited discrimination against the plaintiff based solely upon his race and color.

(iii) In June, 1971, when the plaintiff was passed over, or denied the sought promotion to GS-9, the "reason" spuriously advanced at that time was the alleged lack of "voice experience." Nothing was then mentioned about any alleged refusal to perform any assignment, although the alleged "failure" to perform was said to have occurred in March, 1971, well before the said June 1971 incident of being "passed over."

(iv) The circumstances of the "passing over," as stated by the defendants, was but a sham, a pretense and a fraud to cover up the racial discrimination then being exerted and practiced against the plaintiff because of the plaintiff's race and color.

(b) Subsequently and by reason of the sham and fraud practiced against the plaintiff, he agreed to undertake further training, having accepted in good faith the representations of the defendants concerning his experience; he acquired the said experience theretofore alleged to be absent; he acquired further qualifications, including special educational courses taken at his own expense and upon

his own time; the said circumstances, coupled with his long enduring seniority, gave him superior qualifications for promotion to the next vacancy for the title of GS-9.

(c) When said vacancy did in fact occur in 1972, plaintiff was described as "qualified," by reason of the excellence of his professional background and record.

(d) Despite plaintiff's qualifications, a white colleague, with less qualifications and less seniority, was appointed to the vacancy, the title of which the plaintiff had been considered for in 1971 and for which the plaintiff had been induced by lies and racial discrimination to aspire to in the said 1972.

(e) Defendant was "passed over" a second time in 1972, for the false, invented, concocted and pretended "reason" that he lacked certain qualities of co-operativeness and had refused to do certain work when ordered by a superior to do said work. The said sham, pretense and invention advanced as a false reason for disqualifying the plaintiff for the said promotion, was merely the convenient cover-up and camouflage for the wrongful, illegal and improper racial discrimination brought to bear against the plaintiff. In fact and in truth, the genuine and real reason for the plaintiff's failure to be promoted was the sum of the acts of racial discrimination against the plaintiff, all of which are prohibited by the Civil Rights Act of 1964 and the 1972 amendments to said Act.

(f) Upon information and belief, the defendants, in their relationships with the plaintiff, invoked antiquarian standards on which approval of the plaintiff would be based; in general, and specifically, with respect to the plaintiff, the defendants regarded members of the Negro

race as inferior and expected from Negroes, a fawning, humble and self-effacing attitude, exhibiting gratitude and cowering timidity in the presence of whites in a superior job position. The plaintiff, on the other hand, is a black citizen who exhibits pride in himself, pride in his abilities, his background and his extensive education and job skills. The defendants construed this attitude to be one of hostile arrogance, instead of pride and the said defendants resented such attitude on plaintiff's part and agreed among themselves to penalize the plaintiff because he possessed racial attitudes and characteristics of individuality and personality which disagreed with defendants' stereotyped attitudes and expectations and the said defendants did in fact and in truth penalize the plaintiff and said penalties of discrimination and preference for others who were less qualified than plaintiff and members of the white race, all to the sore abuse and breach of the said Civil Rights Act of 1964 and the 1972 Amendments thereto, and all to plaintiff's harm, deprivation and proscribed loss and detriment.

(g) In consequence of said conduct, attitude and illegal discrimination on the part of the defendants, acting both together and singly, the plaintiff's career with the United States Government has been forever ruined, after over fifteen years of loyal and skillful service to the United States of America in positions of trust and fidelity, including the loss of plaintiff's job, as well as the loss of opportunities to be advanced on merit in his career of Federal employment. Plaintiff has been further so diminished in his morale that he has been compelled to seek redress of the grievous wrongs done to him and his career by resorting to litigation in this Court, all of

which places a heavy burden upon him and his meager resources and his diminished estate.

(h) The plaintiff's wrongful discharge, occasioned by the wrongdoing and breach of Federal statute as alleged herein, was occasioned by said wrongful and racially discriminatory acts of the defendants and not by reason of any fault or lack on the part of the plaintiff.

COUNT V

The Acts of the Civil Service Commission

The particular acts of the United States Civil Service Commission which warrant the relief hereinafter requested and prayed for by the plaintiff, are as follows:

(a) Following the prohibited racial discrimination against the plaintiff in his employment as aforesaid, the plaintiff, pursuant to rules and regulations relating to employee complaints, filed a formal complaint with the United States Civil Service Commission, alleging a wrongful racial discrimination against him connected with his employment.

(b) A hearing was held in due course upon such complaint and after the completion thereof, the hearing officer made his findings and recommendations, claiming that there was no racial discrimination, but that the plaintiff had failed to be promoted to GS-9 because of his attitude and not because of any racial discrimination against him.

(c) This finding was an arbitrary and capricious determination and not based upon truth and the facts in dispute and was and is illegal and improper in the following respects, to wit:

(i) The determination arrived at after the said hearing, was a conclusion which had been decided upon prior to the said hearing.

(ii) The said hearing was but a sham and a fraud convened to simulate propriety and allegiance to the law when, in fact, the conclusion had been predetermined and the said hearing was but a form to cloak a decision arrived at prior thereto.

(iii) The hearing officer was not sensitive to the subtle nuances of racial discrimination and the manifold indirect ways of a white society to penalize an individualistic and distinctive Negro.

(iv) The hearing officer accepted as truth and gave prohibitive value to the rankest kind of hearsay, gossip and untruth in reaching his conclusion, in the absence of sworn testimony to support an otherwise naked conclusion, especially with respect to a witness, Fred Mandato, who testified that certain "incidents" were brought to his attention, concerning the plaintiff; that other "individuals" had mentioned the plaintiff to him critically; that he was "told" that plaintiff had gone to lunch, instead of completing certain work, although he confessed that he had no knowledge of what the plaintiff's superior may have instructed or told plaintiff. Such accumulations of hearsay and gossip in the record were, in sum, a sinister totality, adding to the improper discrimination against the plaintiff and added up to the arbitrariness and capriciousness of the hearing officer in reaching his prohibited determination concerning the plaintiff's complaints. The said hearing officer further allowed in the record and considered against the plaintiff various matters of alleged complaint which occurred long

after the critical periods under consideration, all to the arbitrary and capricious prejudice against the plaintiff. The hearing officer also accepted against the plaintiff, testimony claiming improprieties on the part of the plaintiff, even though there had never been any complaint after such alleged improprieties and nothing appeared in plaintiff's personnel folder relating to such matters, all of which was prejudicial, wrongful, improper, capricious and arbitrary.

(v) The hearing officer employed standards by which he judged the plaintiff which were so subjective as to be vague and improper, such as the claim that the plaintiff had no close friends in his employment, which bore no objective relationship to the plaintiff's abilities and professional competence whatsoever.

COUNT VI

Plaintiff's Administrative Complaint

Within ninety days of the occurrence of the claimed racial discrimination against the plaintiff as herein set forth, plaintiff filed his written charges under oath with the Civil Service Commission, alleging a breach of the Equal Employment Opportunity Act and the amendments of 1972, his rights under Title VII of the Civil Rights Act of 1964.

Under date of December 13, 1972, the said Civil Service Commission held a hearing on the plaintiff's administrative complaint and, under date of February 9, 1973, the said hearing officer rendered his decision and determination finding that the evidence did not support plaintiff's allegations of racial discrimination and he recommended no corrective action in plaintiff's behalf.

For all of the reasons set forth in Count IV and the preceding Counts of this complaint, it is claimed by the plaintiff that the handling of his complaint, the hearing and the determination reached by the hearing officer, were all arbitrary, capricious, illegal and improper and in violation of the spirit, the letter and the remedial intention of the Civil Rights Act of 1964 and the 1972 amendments to the said Act, all to the plaintiff's deprivation of due process and the protections intended and mandated by the said Civil Rights Act and the plaintiff's employment rights.

Following the receipt by the plaintiff of the advice that his complaint had been dismissed administratively, and within the time permitted by statute, allowing him to institute a civil action for redress of his grievances, the plaintiff has commenced this said civil action.

Although both the City and State of New York have bureaus and departments administering human rights agencies to bar job discrimination, upon information and belief, the Civil Rights Act of 1964 and the 1972 amendment of the act, pre-empt the field with respect to complaints of racial discrimination in federal employment and jurisdiction as heretofore alleged, is conferred upon this court by federal statute. A copy of plaintiff's administrative complaint is annexed hereto as an exhibit and made a part of this complaint.

COUNT VII

If the relief hereinafter prayed for is not granted, the plaintiff will be irreparably denied rights secured to him by the Civil Rights Act of 1964 and the 1972 amendment thereof.

Plaintiff has no adequate remedy at law to redress the wrongs described above.

Complaint

WHEREFORE, plaintiff prays as follows: That this Court grant such relief as may be appropriate, including injunctive orders, damages, costs, attorney's fees and back pay.

/s/ CLARENCE BROWN
Plaintiff's Signature

GREENUP and MILLER
Atorneys for Plaintiff
277 Broadway
New York, N. Y. 10007
Tel.: 666-8880

By: /s/ JOSEPH GREENUP
A Member of the Firm

Dated: April 30, 1973.

Exhibit 1 Annexed to Complaint
(Complaint of Discrimination in the Federal Government)

(See Opposite) ☞

COMPLAINT OF DISCRIMINATION IN THE FEDERAL GOVERNMENT
BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

(Please Type or Print)

(FOR AGENCY USE) (7)

1. WHAT IS YOUR (COMPLAINANT'S) FULL NAME?
Clarence Brown

2. WHAT IS YOUR TELEPHONE NUMBER INCLUDING AREA CODE IF YOU KNOW IT?

YOUR STREET ADDRESS (OR RD NUMBER OR POST OFFICE BOX NUMBER)
468 Ralph Street

HOME PHONE:
201 846 6742

YOUR CITY | STATE | ZIP CODE
Somerset, New Jersey | | 08873

WORK PHONE:
212-264-1266 ✓

3. WHICH FEDERAL OFFICE DO YOU BELIEVE DISCRIMINATED AGAINST YOU? *(Prepare a separate complaint form for each office which you believe discriminated against you.)*

A. NAME OF OFFICE WHICH YOU BELIEVE DISCRIMINATED AGAINST YOU:
T.C.S Communications Divn

B. STREET ADDRESS OF OFFICE:
26 Federal Plaza rm 2747

C. CITY | STATE | ZIP CODE
New York, New York 10007

D. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU *(If you know)*:
Mr. J. Daley, Mr. A. Gallo, Mr. F. Lapolla

4. ARE YOU NOW WORKING FOR THE FEDERAL GOVERNMENT?
☒ YES (ANSWER A, B, C AND D BELOW.)
☐ NO (CONTINUE WITH QUESTION 5.)

A. NAME OF AGENCY WHERE YOU WORK:
General Services Administration

B. STREET ADDRESS OF YOUR AGENCY:
26 Federal Plaza room 2747

C. CITY | STATE | ZIP CODE
New York, New York 10007

D. WHAT IS THE TITLE AND GRADE OF YOUR JOB?
Communications ~~Assistant~~ Specialist GS-7

5. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE:

MONTH	DAY	YEAR
6	27	71

6. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST. BECAUSE OF YOUR:
☒ RACE OR COLOR. IF SO, SHOW YOUR RACE OR COLOR American Negro (Black)
☐ RELIGION. IF SO, SHOW YOUR RELIGION _____
☐ NATIONAL ORIGIN. IF SO, SHOW YOUR NATIONAL ORIGIN _____
☐ SEX. IF SO, STATE YOUR SEX. _____

7. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. *(You may continue your answer on another sheet of paper if you need more space.)*

I believe that i was discriminated against because of the following reasons: (further see my personal letter dated 7-9-71)
(A) Was'nt considered for GS-9 Communications Specialist positions, five consecutive times (1967, 1968, 1969, 1970, & 1971) (further see the attachment (B) through (I)

8. I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR *(See instructions)*:
☒ YES ☐ NO

9. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN IN YOUR BEHALF ON YOUR COMPLAINT?
I would like to be promoted to a GS-9 Communications Specialist position in the Communications Management Branch and further considered for future educational and promotional opportunities.
I definitely am entitled to that position, because I am better qualified.

10. DATE OF THIS COMPLAINT

MONTH	DAY	YEAR
7	15-71	

11. SIGN YOUR (COMPLAINANT'S) NAME HERE:
Clarence Brown EXHIBIT 1

CSA 80 71-939

SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

15a

Exhibit 1 Annexed to Complaint

7. Explain how you believe you were discriminated against (treated differently from other employees or applicants) because of your race, color, religion, sex, or national origin. (continued from CSC form 894)

(B) Abolishment of GS-9 Communications Specialist position during the years 1967-1968.

(C) I have not been promoted during the past five years and other employees within the TCS Division have steadily advanced themselves (these individuals have almost the exact amount of tenure as I have) to GS-11 and GS-12 positions.

(D) I Received the GS-9 eligibility rating on the Mid-level management examination (Category Communications Management) and still I have not been promoted.

(E) Since my last promotion 5 years ago my job knowledge and skills have increased tremendously—(example) Civil Service and College completion training.

(F) Mr. Ownbey was promoted approximately two years ago (from a GS-5 communicator to a GS-7 Communications Asst) and now after two years, he is a GS-9 Communications Specialist, with no direct supervisory experience with personnel etc. I also have approximately ten years of supervisory experience in the communications field. I am better qualified than Robert Ownbey and I definitely feel that I have been discriminated against.

(G) In accordance with Mr. Russell's report Mr. Gallo, and Mr. Daly, said that I was not cooperative and

Exhibit 1 Annexed to Complaint

cited two specific examples. During the month of March 1971, between the hours of 5 pm-6 pm (without compensatory or overtime) Mr. Gallo, however, did ask me to conduct a survey (for a period of 6 months—GSA Teletype Cntr) *AS A FAVOR TO HIM AND NOT AS A DIRECT ORDER.* If Mr. Gallo, thought I was *SO UNCOOPERATIVE,* why wasn't any adverse action or memo statements brought against me at that time. No one accused me of being uncooperative until I questioned why I was not considered for the job, during the month of July 1971.

(H) On December 9, 1970, Mr. William Trost was promoted to Communications Specialist GS-9. I asked Mr. Gallo, why I wasn't selected for this position. He stated that I did not have any *voice experience.* I have acquired voice experience since that time and yet Mr. Robert Ownbey, received the promotion, dated 6-27-71. Mr. Gallo's motives and decisions are discriminatory against me and no matter how much experience, knowledge or education I attain; he will never promote me.

(I) General harassment and reprisal tactics have been performed by the Communications Division.

CLARENCE BROWN, July 16, 1971
/S/ CLARENCE BROWN

Notice of Motion to Dismiss with Supporting Affidavits

(Title omitted in printing)

SIRS:

PLEASE TAKE NOTICE that the undersigned will move this Court on the 10th day of August, 1973, in Courtroom 1106, United States Court House, Foley Square, New York, New York at 2:15 P.M., or as soon thereafter as counsel may be heard, for an order dismissing the complaint, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the ground that the Court lacks subject matter jurisdiction over this action.

Dated: New York, New York
July 27, 1973.

Yours, etc.

PAUL J. CURRAN
United States Attorney for the Southern District of New York
Attorney for Defendants

By: JOEL B. HARRIS
Assistant United States Attorney
Office & Post Office Address
U.S. Courthouse
Foley Square, New York,
N.Y. 10007
Tel.: 264-6435

Notice of Motion to Dismiss with Supporting Affidavits

To:

GREENUP AND MILLER, Esqs.
Attorney for Plaintiffs
Office & Post Office Address:
200 West 135th Street, Suite 218
New York, New York 10030

Affidavit of Joel B. Harris

(Title omitted in printing)

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK, ss.:

JOEL B. HARRIS, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and I am fully familiar with and in charge of this matter. I submit this affidavit in support of the defendants' motion to dismiss the complaint, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the ground that the Court lacks subject matter jurisdiction over this action.

2. The facts are detailed in the affidavit of Horst Mueller, dated June 19, 1973, which is submitted herewith.

3. Plaintiff brought this action against his employing agency, General Services Administration, and certain of its officers, alleging discrimination in their failure to promote him (Complaint, Count IV) and the failure of the United States Civil Service Commission, which has not been named as a defendant, despite the contrary statement in Count III, to make an in-depth inquiry into the alleged racial discrimination (Counts III, V). He seeks "such relief as may be appropriate, including injunctive orders, damages, costs, attorney's fees and back pay."

Plaintiff alleges that he filed a complaint of discrimination which led to an agency decision of "no discrimination." Although plaintiff alleges that the Civil Service Commission held the hearing (Count V), the Mueller affidavit makes clear that the decision was rendered by the

General Services Administration Director of Civil Rights (¶ 3C and D). Exhibit 5 to the Mueller affidavit is a copy of the certified letter sent to plaintiff, advising him of the final agency decision and his right to either appeal to the Civil Service Commission Board of Appeals and Review within 15 days of its receipt, or to file a civil action in federal court within 30 days of its receipt. Exhibit 6 to the Mueller affidavit is a certified mail receipt indicating that plaintiff received said letter on March 26, 1973.

No appeal to the Civil Service Commission has been filed, and plaintiff did not file his complaint in this action until May 7, 1973, too late to comply with the applicable limitation period.

4. As the accompanying memorandum of law makes clear, none of the statutes relied upon by plaintiff gives this Court jurisdiction over the subject matter of this action.

WHEREFORE, defendants' motion to dismiss the complaint with prejudice should be granted in all respects.

/s/ JOEL B. HARRIS
Assistant United States Attorney

Sworn to before me this
27th day of July, 1973.

MARY L. AVENT
Notary Public

MARY L. AVENT,
Notary Public, State of New York
No. 03-4500237
Qualified in Bronx County
Cert. Filed in Bronx County
Commission Expires March 30, 1975

Affidavit of Horst Mueller

(Title omitted in printing)

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

HORST MUELLER, being first duly sworn, deposes and says:

1. I am the Regional Personnel Officer, Region 2, of the General Services Administration, an agency of the United States of America, one of the above-named defendants. The above-named defendant Frank Lapolla is presently employed by General Services Administration, Region 2, as Director, Telecommunications Division, Automated Data and Telecommunications Service. The above-named defendant Joseph A. Daly was employed by General Services Administration, Region 2, as Regional Director, Transportation and Communications Service until his retirement on June 30, 1972. The above-named defendant Albert Gallo was employed by General Services Administration, Region 2, as Chief, Communications Division, Transportation and Communications Service until his retirement on March 22, 1972.

2. I make this affidavit in support of a motion on behalf of General Services Administration and all other defendants to dismiss the above-entitled action.

3. I am acquainted with the plaintiff, Clarence Brown, and am familiar with his personnel records, all of which are under my custody and control. An examination of these records discloses the following facts:

A. Plaintiff is now, and has been continuously since 1957, an employee of the General Services Administration. Con-

trary to the allegations in Paragraph (g) of Count IV of the Complaint in the above-entitled action, he has not lost his job with General Services Administration and is and has been continuously employed to the present date. His position is Communications Specialist, GS-7, Telecommunications Division, Automated Data and Telecommunications Service, General Services Administration, New York.

B. On July 15, 1971, plaintiff filed with the General Services Administration Equal Opportunity Officer, an administrative complaint of racial discrimination in the Federal Government. (Exhibit 1) He claimed that his non-selection for promotion to the position of Communications Assistant, GS-9 and the promotion of a white employee to that position, effective on June 27, 1971, constituted discrimination because of his race. After a review and analysis of the investigative report on plaintiff's complaint of discrimination, the Regional Administrator, Region 2, determined that there was no evidence of racial discrimination and so informed the plaintiff by letter dated October 19, 1972. (Exhibit 2) The plaintiff did not accept the agency decision and by letter dated October 25, 1972, requested a hearing. (Exhibit 3)

C. Pursuant to 5 CFR Section 713.218, the requested hearing was held on December 13, 1972 at 26 Federal Plaza, New York City before Complaints Examiner John E. Selbmann of the U.S. Civil Service Commission, at which testimony was taken and a transcript was prepared. Following the hearing, Findings and a Recommended Decision dated February 9, 1973 were prepared by Mr. Selbmann and transmitted to General Services Administration. (Exhibit 4) Mr. Selbmann found no evidence of discrimination and recommended that no action be taken on the complaint.

Affidavit of Horst Mueller

D. By certified letter dated March 23, 1973 addressed to plaintiff (Exhibit 5), the General Services Administration Director of Civil Rights, E. E. Mitchell, rendered the final agency decision that the evidence of the case did not support the complaint of racial discrimination. In accordance with 5 CFR 713.221, a copy of the transcript of the hearing and the findings and Recommended Decision of the Complaints Examiner were enclosed in said letter dated March 23, 1973. Plaintiff was advised by said letter that if the decision did not meet his satisfaction, he could file an appeal in writing with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. within 15 calendar days of the receipt of said letter dated March 23, 1973 and that plaintiff also had the right to file a civil action in the Federal District Court within 30 calendar days of receipt of the letter. The certified mail receipt of the above-mentioned letter of March 23, 1973 indicates that it was received on March 26, 1973. A copy of the receipt is attached hereto as defendant's Exhibit 6.

4. I am informed and believe that the plaintiff filed no appeal with the Board of Appeals and Review, U.S. Civil Service Commission.

5. Plaintiff's Complaint in the above-entitled action was filed in this court on May 7, 1973, more than 30 days after the receipt of the final agency decision letter dated March 23, 1973. The Summons and Complaint were served upon defendants General Services Administration and Frank A. Lapolla on May 14, 1973.

/s/ HORST MUELLER
HORST MUELLER

Affidavit of Horst Mueller

Sworn to before me this
19th day of June, 1973.

PAUL CIRILLO
Notary Public

PAUL CIRILLO
Notary Public, State of New York
Qualified in Nassau County
Cert. Filed with the New York Co. Clerk
Commission Expires March 30, 1974

Exhibit 1 Annexed to Affidavit of Horst Mueller
(Complaint of Discrimination in the Federal Government)

(See Opposite) ☞

COMPLAINT OF DISCRIMINATION IN THE FEDERAL GOVERNMENT
BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

(Please Type or Print)

(FOR AGENCY USE) (7)

27a

27a

1. WHAT IS YOUR (COMPLAINANT'S) FULL NAME?
Clarence Brown

2. WHAT IS YOUR TELEPHONE NUMBER INCLUDING AREA CODE IF YOU KNOW IT?

YOUR STREET ADDRESS (OR RD NUMBER OR POST OFFICE BOX NUMBER)
468 Ralph Street

HOME PHONE:
201 846 6742

YOUR CITY | STATE | ZIP CODE
Somerset, New Jersey | 08873

WORK PHONE:
212-264-1266 ✓

3. WHICH FEDERAL OFFICE DO YOU BELIEVE DISCRIMINATED AGAINST YOU? *(Prepare a separate complaint form for each office which you believe discriminated against you.)*

4. ARE YOU NOW WORKING FOR THE FEDERAL GOVERNMENT?
☒ YES (ANSWER A, B, C AND D BELOW.)
☐ NO (CONTINUE WITH QUESTION 5.)

A. NAME OF OFFICE WHICH YOU BELIEVE DISCRIMINATED AGAINST YOU:
T.C.S Communications Divn

A. NAME OF AGENCY WHERE YOU WORK:
General Services Administration

B. STREET ADDRESS OF OFFICE:
26 Federal Plaza rm 2747

B. STREET ADDRESS OF YOUR AGENCY:
26 Federal Plaza room 2747

C. CITY | STATE | ZIP CODE
New York, New York 10007

C. CITY | STATE | ZIP CODE
New York, New York 10007

D. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU *(If you know)*:
Mr. J. Daley, Mr. A. Gallo, Mr. E. Ubrolle

D. WHAT IS THE TITLE AND GRADE OF YOUR JOB?
Communications ~~Assistant~~ Specialist GS-7

5. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE:

MONTH	DAY	YEAR
6	27	71

6. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST, BECAUSE OF YOUR:
☒ RACE OR COLOR. IF SO, SHOW YOUR RACE OR COLOR American Negro (Black)
☐ RELIGION. IF SO, SHOW YOUR RELIGION _____
☐ NATIONAL ORIGIN. IF SO, SHOW YOUR NATIONAL ORIGIN _____
☐ SEX. IF SO, STATE YOUR SEX. _____

7. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. *(You may continue your answer on another sheet of paper if you need more space.)*

I believe that i was discriminated against because of the following reasons: (further see my-personal letter dated 7-9-71)
(A) Was'nt considered for GS-9 Communications Specialist positions, five consecutive times (1967, 1968, 1969, 1970, & 1971) (further see the attachment (B) through (I)

8. I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR *(See instructions)*:
☒ YES ☐ NO

9. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN IN YOUR BEHALF ON YOUR COMPLAINT?

I would like to be promoted to a GS-9 Communications Specialist position in the Communications Management Branch and further considered for future educational and promotional opportunities.

I definitely am entitled to that position, because I am better qualified.

BEST COPY AVAILABLE

10. DATE OF THIS COMPLAINT

MONTH	DAY	YEAR
7	15-71	

11. SIGN YOUR (COMPLAINANT'S) NAME HERE:
Clarence Brown

GSA FPR 71-333

SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Exhibit 1 Annexed to Affidavit of Horst Mueller

7. Explain how you believe you were discriminated against (treated differently from other employees or applicants) because of your race, color, religion, sex, or national origin. (continued from CSC form 894)

(B) Abolishment of GS-9 Communications Specialist position during the years 1967-1968.

(C) I have not been promoted during the past five years and other employees within the TCS Division have steadily advanced themselves (these individuals have almost the exact amount of tenure as I have) to GS-11 and GS-12 positions.

(D) I Received the GS-9 eligibility rating on the Mid-level management examination (Category Communications Management) and still I have not been promoted.

(E) Since my last promotion 5 years ago my job knowledge and skills have increased tremendously—(example) Civil Service and College completion training.

(F) Mr. Ownbey was promoted approximately two years ago (from a GS-5 communicator to a GS-7 Communications Asst) and now after two years, he is a GS-9 Communications Specialist, with no direct supervisory experience with personnel etc. I also have approximately ten years of supervisory experience in the communications field. I am better qualified than Robert Ownbey and I definitely feel that I have been discriminated against.

(G) In accordance with Mr. Russell's report Mr. Gallo, and Mr. Daly, said that I was not cooperative and

Exhibit 1 Annexed to Affidavit of Horst Mueller

cited two specific examples. During the month of March 1971, between the hours of 5 pm-6 pm (without compensatory or overtime) Mr. Gallo, however, did ask me to conduct a survey (for a period of 6 months—GSA Teletype Cntr) *AS A FAVOR TO HIM AND NOT AS A DIRECT ORDER.* If Mr. Gallo, thought I was *SO UNCOOPERATIVE,* why wasn't any adverse action or memo statements brought against me at that time. No one accused me of being uncooperative until I questioned why I was not considered for the job, during the month of July 1971.

(H) On December 9, 1970, Mr. William Trost was promoted to Communications Specialist GS-9. I asked Mr. Gallo, why I wasn't selected for this position. He stated that I did not have any *voice experience.* I have acquired voice experience since that time and yet Mr. Robert Ownbey, received the promotion, dated 6-27-71. Mr. Gallo's motives and decisions are discriminatory against me and no matter how much experience, knowledge or education I attain; he will never promote me.

(I) General harassment and reprisal tactics have been performed by the Communications Division.

CLARENCE BROWN, July 16, 1971
/s/ CLARENCE BROWN

Exhibit 2 Annexed to Affidavit of Horst Mueller

(Letter to Clarence Brown dated October 19, 1972)

October 19, 1972

Mr. Clarence Brown
468 Ralph Street
Franklin Township
Somerset, New Jersey 08873

Dear Mr. Brown:

As a result of thoroughly reviewing and analyzing the investigative report on your complaint of discrimination, we found no evidence of racial discrimination.

Under the GSA Promotion Plan which operates in accordance with the requirements of Chapter 335, Federal Personnel Manual, the selection for advancement was made from among the best qualified candidates without discrimination for any nonmerit reasons such as age, sex, race, color, religion, national origin, marital status, lawful political affiliation, physical handicap, membership or nonmembership in an employee organization, and without favoritism based on personal relationship or patronage.

There is not sufficient evidence in the complaint file to indicate either administrative errors in the selection of Robert Ownbey or racial discrimination against you.

Investigation did disclose that minority personnel in the Communications Division, TCC, have received a larger percent of training, appointment, and promotions during the last three years than their representation in the workforce.

Exhibit 2 Annexed to Affidavit of Horst Mueller

Based on the foregoing I am not proposing any remedial, corrective or disciplinary action.

If this proposed agency decision is unacceptable to you, you have the right to request a hearing on the complaint with a subsequent decision by the Director of Civil Rights. The hearing would be conducted by a complaints examiner who is from another agency and who has been certified by the Civil Service Commission. If you desire a hearing, you must within 7 calendar days from receipt of this letter contact the Regional WDO Officer, Mr. William Vega, on telephone number 264-1299, GSA 26 Federal Plaza, NY, Room 2713.

If you do not contact Mr. Vega within 7 calendar days, this proposed agency decision becomes the final agency decision on your complaint. You would then have the right to appeal the final agency decision to the Board of Appeals and Review, U. S. Civil Service Commission, Washington, DC 20415 within 15 calendar days of receipt of this letter. You would also have the right to file a civil action in Federal district court within 30 calendar days of receipt of this letter.

(signed) Gerald J. Turetsky
Gerald J. Turetsky
Regional Administrator

Exhibit 2 Annexed to Affidavit of Horst Mueller

Concurrences:2ARE WILLIAM VEGA
William Vega

cc: 2A (2)
Official file
Reading file
WVega:lad:10/5/72:264-1299
Director of Civil Rights—AR

2AR BETTY GRANGER REID
Betty Granger Reid

ALFRED KLEINFELD
2B—
Alfred Kleinfeld
Regional Director of Administration

Exhibit 3 Annexed to Affidavit of Horst Mueller

(Letter to William Vega dated October 25, 1972)

Mr. Clarence Brown
468 Ralph Street
Somerset, NJer 08873

Mr. William Vega
Equal Employment
Opportunity Ofcr
Ofc of Civil Rights
26 Federal Plaza rm 2713B
New York, New York 10007

October 25, 1972

Dear Mr. Vega:

I have reviewed Mr. Gerald Turetsky's analyzing investigative report of October 19, 1972 and I do not concur with its findings. It is requested, that a hearing be arranged at your earliest convenience.

Sincerely,

/s/ CLARENCE BROWN
Mr. Clarence Brown

Exhibit 4 Annexed to Affidavit of Horst Mueller

(Findings and Recommended Decision in the Discrimination Complaint)

OF:

COMPLAINANT:

Clarence Brown
468 Ralph Street
Somerset, New Jersey 08873

REPRESENTATIVE:

Thomas Hoffman
Attorney-at-Law
2875 Broadway
New York, New York 10025

AGENCY:

General Services Administration
Region 2
26 Federal Plaza
New York, New York 10007

REPRESENTATIVE:

Charles C. Luetke
Office of Regional Counsel
General Services Administration
Region 2
26 Federal Plaza
New York, New York 10007

COMPLAINT:

Non-Selection for Promotion based upon discrimination because of race (Black-American Negro)

Exhibit 4 Annexed to Affidavit of Horst Mueller

COMPLAINTS EXAMINER:

John E. Selbmann
U. S. Civil Service Commission
26 Federal Plaza
New York, New York 10007

DATE OF HEARING:

December 13, 1972

INTRODUCTION

On Wednesday, December 13, 1972, at 26 Federal Plaza, New York, New York, a hearing was held on this complaint of discrimination, based upon race. Personal testimony was obtained from complainant and five witnesses; additional record evidence was submitted and included in the record as Hearing Exhibits 1 through 3.

ISSUES

Whether complainant's non-selection for promotion to the position of Communications Assistant, GS-9, and the promotion of a white employee to that position, effective on June 27, 1971, constituted discrimination because of his race.

BACKGROUND

In September 1970, Region 2, General Services Administration, issued a vacancy announcement for a series of positions to be filled under the agency Merit Promotion Plan. The opening date for the filing of applications was September 28, 1970, and a closing date was established of October 8, 1970. Among the vacancies announced under Announce-

ment No. 93-71 was that of Communications Specialist, GS-9, located in New York, New York.

According to the agency Merit Promotion Plan, promotion registers were to be established, based upon this Announcement, and utilized in order to fill both current vacancies, together with all future vacancies at the same title and grade, that might arise within one year of the closing date of this Announcement.

On October 19, 1970, the names of three employees were submitted by the Chief, Personnel Branch, GSA, to the Regional Director, TCS, GSA, for consideration for selection to the Communications Specialist, GS-9 position. Individuals listed on this list were: Clarence Brown, Robert Ownbey, and William F. Trost. All of these individuals were rated as "highly qualified" and Mr. Trost (white) was selected for this position by Mr. Joseph Daly, Regional Director, TCS.

Thereafter, on June 15, 1971, the names of three candidates were again referred for selection to the Regional Director, TCS, in connection with a vacancy to a similar position. At this time, the three individuals on the list were: Clarence Brown, Robert Ownbey and John L. Coleman. Candidates Brown and Ownbey were rated as "highly qualified"; Mr. Coleman was rated as "qualified". Mr. Robert Ownbey (white) was selected for this position by Mr. Daly, Regional Director, TCS.

At the time of the first selection, complainant first contacted an EEO Counsellor, alleging discrimination in this selection After counselling, and upon being advised of the imminency of two additional GS-9 vacancies which were purportedly forthcoming in the near future, and for which complainant

allegedly had an "excellent" chance of promotion, complainant decided to discontinue further processing of this complaint. At the time of the second promotion, Mr. Brown again contacted the EEO Counsellor.

Mr. Brown, the complainant, contends that he was better qualified for the position on the basis of his seniority, education, training and supervisory experience. He further contended that Mr. Gallo, as well as Messrs. Daly and Lapolla, with whom Mr. Gallo had consulted in connection with the promotion action, acted in a discriminatory manner in not selecting him for the vacancy. He further contends that although he was advised that his non-selection for the original promotion was based upon his lack of "voice" experience, he has since acquired such experience but that nevertheless Mr. Ownbey received the promotion.

FINDINGS OF FACT AND CONCLUSIONS

The evidence in this case reflects that the selection of Mr. Ownbey for the vacancy of Communications Specialist, GS-9, effective on June 27, 1971, was made by Mr. Joseph A. Daly, Regional Director, Transportation and Communications Service, GSA. As noted above, both Mr. Robert Ownbey and the complainant, Mr. Brown, were rated as "highly qualified" for the position. Under the circumstances, the relative experience, education, and background of both Mr. Ownbey and Mr. Brown are irrelevant to the issues, inasmuch as the rating of "highly qualified" placed these two individuals in the same area of competition for the position.

In an affidavit dated October 18, 1971, Mr. Daly stated that, "After careful consideration of these candidates' qualifications and through discussion with appropriate supervisory

personnel, I then selected Mr. Robert Ownbey for the position, who, in my judgment, was the best qualified."

In support of his decision, Mr. Daly further stated in this affidavit that in his opinion the GS-9 position was one on a career ladder leading to further supervisory positions and that, accordingly, an employee's cooperation and willingness to accept responsibility were necessary prerequisites for the position. In this respect, Mr. Daly noted that the candidates' supervisors, Messrs. Albert J. Gallo, Frank A. Lapolla, and Benjamin Bartnik, unanimously recommended Mr. Ownbey; that Mr. Gallo termed Mr. Brown "uncooperative"; and that this opinion was concurred in by Messrs. Lapolla and Bartnik. In his affidavit, Mr. Daly noted as an example of Mr. Brown's alleged lack of cooperation an instance when the latter had been requested by Mr. Gallo to perform a management survey of the Federal Telecommunications Record Center, but had refused because he thought that Mr. Gallo had made this request as a favor.

In an affidavit dated October 29, 1971, Mr. Albert Gallo, Chief, Communications Division, stated that he and other Communications Division supervisory personnel had unanimously recommended Mr. Robert Ownbey for the position in question. He stated that his own knowledge was based upon his contacts with both men on a day-to-day basis, over a period of years, noting further that Mr. Ownbey had always displayed complete cooperation and willingness to accept responsibility, whereas Mr. Brown, on occasion, would offer some excuse or refuse assignments. As one example, Mr. Gallo cited an instance when Mr. Brown refused to drive the Regional Administrator on grounds that he was too busy; and he cited a further instance where

Mr. Brown refused an assignment to conduct a management survey of the Record Center. Mr. Gallo also stated that there were instances where he had received complaints from Mr. Fred Mandato concerning Mr. Brown's attitude and availability for certain work in respect to data processing, for which he was responsible.

In an affidavit dated October 22, 1971, Mr. Frank A. Lapolla stated that he also had recommended Mr. Ownbey over Mr. Brown, based upon his own observations, as well as comments concerning Mr. Brown's attitude received from Mr. Gallo and Mr. Bartnik. Mr. Lapolla noted complaints received by him from a Mr. Festa in the ADP Unit, complaining about Mr. Brown's indifference and nonresponsiveness to calls from that Unit. Mr. Lapolla also stated that he was aware that Mr. Bartnik had had several talks with Mr. Brown concerning attitude and lack of cooperation; as well as the fact that Mr. Brown had refused an assignment from Mr. Gallo, because he thought that the assignment was being requested as a personal favor.

Mr. Bartnik was not available to give evidence or testimony at any stage of the processing of this case. In fact, it was his leaving to retire which had created the vacancy, serving as a basis for the complaint. The only record information concerning his opinion of the complainant lies in a promotion appraisal, prepared by him on October 14, 1970. On this appraisal, Mr. Bartnik had noted under the factor "Dependability—Present when needed and requires minimum supervision" as "True, most of the time". Under the factor, "Maintains Good Working Relations with Supervisor and Fellow Workers", Mr. Brown was rated as "True, some of the time". Although Mr. Gallo's affi-

davit was included in the report of investigation, as noted above, the latter was not available for personal testimony at the hearing, due to his no longer being employed by the agency. Similarly, John Festa, who reportedly had complained concerning appellant's work performance was no longer employed as well.

While the absence of these witnesses would conceivably deprive the complainant, Mr. Brown, of an ability to cross-examine them, Mr. Brown made no request for their appearance at the hearing. Significantly, we note from Mr. Brown's own testimony at the hearing a corroboration of the fact that Mr. Gallo had approached him for the purpose of performing a management study, and that he had declined to do so. While Mr. Brown contends that this was not a refusal of a direct order and that he should not be disciplined for such a refusal, it should be noted that the issue in question in this case is not whether the refusal requires appropriate disciplinary action, but whether it is an indication of lack of cooperation. It is the opinion of this Examiner that the incident in question could reasonably be interpreted as a lack of the type of cooperation to be desired of an employee being considered for promotion to the position in question.

During the hearing, it was amply demonstrated that the incident involving complainant's failure to drive the Regional Director, when requested to do so, despite the fact that he was on a roster maintained by the agency for that purpose, and was in line for the next assignment, had occurred subsequent to the promotion. Accordingly, such a matter should not have been considered in effecting the promotion action, and we note nowhere in the record that this was done.

The other instance of complainant's failure to fully cooperate lay in his relationships between ADP Personnel in the transmission and receiving of certain information, for which he had responsibilities. Corroboration of this matter was received in the testimony of Mr. Fred Mandato, during the hearing. Although Mr. Mandato could not personally attribute these problems to the complainant, he did testify that he had received complaints concerning complainant from his subordinates, as well as to the fact that there were problems arising between his office and the Division in which Mr. Brown was employed. Taken together with other evidence in this case, there appears sufficient basis to conclude that not only did these complaints exist, but that Mr. Brown was responsible to some degree. Under the circumstances, we find that the evidence contains ample basis for the opinion of complainant's supervisors that he was not *fully* cooperative.

Inasmuch as the manner, extent, and degree of an employee's cooperation is a reasonable factor which could be considered by a selecting officer when attempting to choose between two otherwise equally-qualified individuals, it is the opinion of this Examiner that the basis for Mr. Brown's non-selection lay in his lack of full cooperation, and was not due to discrimination because of his race.

In reviewing the pattern of employment practices within the Transportation and Communication Service as of November 1971, the record reflects that of a total of 269 employees, 76 or 28% were minority group employees and that 62 or 23% of the total were black employees. Moreover, in the Communications Division of the Transportation and Communication Service, there were a total of 78 persons employed, of whom 32, or 42%, were black em-

Exhibit 4 Annexed to Affidavit of Horst Mueller

ployees. Moreover, during the period between 1969 and 1971, the Region 2 Communications Division had a total of 14 promotions, of which 5, or 35% were given to black employees. The Communications Division has a total of 14 employees at the GS-9 level, of which 3, or 21%, were black employees.

RECOMMENDED DECISION

It is recommended that a decision be issued reflecting that the complainant, Mr. Clarence Brown, was not discriminated against on account of his race when he was nonselected for promotion to the position of Communications Assistant, GS-9. It is the opinion of this Examiner that the evidence does not support the complaint in this case.

RECOMMENDED CORRECTIVE ACTION

None.

Respectfully submitted

/s/ JOHN E. SELBMANN
John E. Selbmann
Equal Employment Opportunity
Complaints Examiner

NY:EEO:JES:dmh
Feb 9 1973

Exhibit 5 Annexed to Affidavit of Horst Mueller

(Letter to Clarence Brown dated March 23, 1973)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
MAR 23 1973
Mr. Clarence Brown
468 Ralph Street
Somerset, NJ 08873

Dear Mr. Brown:

Pursuant to Chapter 4-9 of ADM P 1090.7, GSA Equal Employment Opportunity Program, I am prepared to render the final agency decision on the complaint of Mr. Clarence Brown of racial discrimination.

The investigative file, hearing transcript, and the complaints examiner's recommended decision have been thoroughly analyzed.

Therefore, based upon my findings, I am rendering the final agency decision on the complaint as follows:

That the evidence in the case does not support the complaint of racial discrimination for promotion against you, but that you should receive career and performance counseling from your immediate supervisor to help you formulate plans to receive appropriate training and to correct your deficiencies as noted by management.

If this decision does not meet with your satisfaction, you may file an appeal in writing, either in person or by mail, with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, DC 20415. The Board's decision is the final administrative appeal. This appeal must be filed within 15 calendar days of receipt of this letter.

Exhibit 5 Annexed to Affidavit of Horst Mueller

If you choose to appeal to the Board of Appeals and Review, you retain the right to file a civil action in Federal district court within 30 calendar days after receipt of the Board's final decision on your appeal. You also have the right to file a civil action in Federal district court within 30 calendar days of receipt of this letter or 180 days after filing an appeal with the Board of Appeals and Review if no decision has been made.

Copies of the hearing transcript and the findings and recommended decision of the complaints examiner are enclosed for your information and review.

Sincerely,

(Signed) E. E. Mitchell

E. E. MITCHELL
Director of Civil Rights

Enclosures

cc:
Official File—ARE 2A
Reading File—ARE 2ARE

ARE/RBrown/mbs 3/13/73

Concur:

ARE .....

AR(EX-O) .....

B .....

LR .....

Exhibit 6 Annexed to Affidavit of Horst Mueller

(Receipt for Certified Mail)

Clarence Brown

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S). POSTAGE AND FEE(S) PAID.

☐ Show to whom, date and address where delivered

☒ Deliver ONLY to addressee

RECEIPT

MAR 23 1973

Received the numbered article described below.

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

Clarence Brown

CERTIFIED NO.

1195111

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

DATE DELIVERED

3/22/73

DATE WHERE DELIVERED (*only if requested*)

POSTAGE AND FEES PAID
CIVIL SERVICE

POSTMARK OF DELIVERING OFFICE

MAR 23 1973

Print your name and address below. If you want to restrict delivery, or to have the article delivered shown on this receipt, check blocks on other side. Mailing permit and any check that may be tied to article.

RETURN TO

Mr. Joseph W. Daniels
Dep. Director of Civil Rights (EEO) (ARE)
General Services Administration
18th & F Sts., N.W., Room 4103
Washington, DC 20405

PS Form 3811 Jan. 1970 *U.S.G.P.O. 1970-O-418-811*

EXH. 6

RECEIVED
MAY 18 1973

BEST COPY AVAILABLE

Affidavit of Mailing

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss

Pauline Troia being duly sworn, deposes and says that she is employed in the office of the United States Attorney for the Southern District of New York.

That on the 27th day of July, 1973, she served a copy of the within govt's notice of motion and memo of law by placing the same in a properly franked envelope addressed to: Greenup and Miller, Esqs., 200 West 135th St. Suite 218 NY NY 10030. And deponent further says that she sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

PAULINE TROIA

Sworn to before me this
27th day of July, 1973

/s/ WALTER G. GRANNON
WALTER G. GRANNON
Notary Public, State of New York
No. 24-0394500
Qualified in Kings County
Cert. filed in New York County
Term Expires March 30, 1975

• • •

MEMO ENDORSED

• • •

Affidavit of Mailing

September 26, 1973

See memorandum decision of this date granting the within motion.

LLOYD F. MACMAHON
U.S.D.J.

U. S. DISTRICT COURT
FILED
SEP 27 1973
S. D. OF N. Y.

Motion for Leave to File an Amended Complaint and to Add Parties

(Title omitted in printing)

Comes now plaintiff by and through counsel Jeff L. Greenup, and moves this Court for leave to file an amended complaint in this matter pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and as grounds therefor states as follows:

1. That the time for filing an amended complaint as of right has run and that the amended complaint can be filed now only with leave of court.

2. The original complaint contains a factual error, to wit: that the plaintiff has been fired, rather, plaintiff has only been refused promotion, which factual error we seek to correct.

3. The original complaint though setting out a claim in the body of said document against Mr. John E. Selbman, Complaint Examiner, United States Civil Service Commission, and the United States Civil Service Commission, due to typographical oversight, failed to list said defendants in the caption of the complaint. The claim against Mr. Selbman and the Commission is quite substantial and should be litigated as part of the instant case.

4. Though plaintiff feels that his jurisdictional statement is clear, the government intimates that the claim under 28 U.S. 1346(a) and (b), 1343(4) and the $10,000 jurisdictional amount for 28 U.S.C. 1331 is not explicit enough. The plaintiff seeks to make the above so explicit in an amended complaint.

Motion for Leave to File an Amended Complaint and to Add Parties

For the foregoing reasons plaintiff prays this Court for leave to file the amended complaint hereto attached and to add parties.

GREENUP AND MILLER
Attorneys for Plaintiff
200 West 135th Street
Suite 218
New York, New York 10030
By: JEFF L. GREENUP
Jeff L. Greenup

Dated: September 15, 1973.

CERTIFICATE OF SERVICE

I hereby certify that copies of foregoing motion and the attached amended Complaint have been mailed postage prepaid, addressed as follows:

Joel B. Harris
Assistant United States Attorney
United States District Court
Southern District
Foley Square
New York, New York 10007

Dated:

/s/ JEFF L. GREENUP
JEFF L. GREENUP

Amended Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

72 Civ. 2026 (LPM)

Clarence Brown,

Plaintiff,

—against—

General Services Administration, United States of America, Transportation and Communications Service, Communications Division, Region 2, Joseph A. Daly, Regional Director, Transportation and Communications Service, Albert Gallo, Chief, Communications Division, Frank A. Lapolla, Acting Chief, Communications Division, Transportation and Communications Service, Region 2, and John E. Selbman, Complaint Examiner, United States Civil Service Commission, and the United States Civil Service Commission,

Defendants.

Count I

Jurisdiction of this Court is invoked pursuant to Title VII of the Civil Rights Act of 1964; 28 U.S. Code, Sections 1331, 1343(4), 1346(a) and (b) and the Equal Employment Opportunity Act of 1972 (hereinafter sometimes referred to as "The 1972 Act"), with particular reference to Section 717 of the 1972 Act, covering discrimination in federal employment. Jurisdiction is specifically enlarged by the said 1972 Act and conferred upon this Court by 42 U. S.

Code Section 2000e-5(g) and 28 U.S. Code Sections 2201 and 2202. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) 42 U.S. Code Sections 2000e et seq., providing for injunctive and other relief against racial discrimination in employment and (b) 42 U.S. Code Section 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States. There is more than $10,000 in controversy.

Count II

Plaintiff is a citizen of the United States and resides at 468 Ralph Street, Franklin Township, Somerset, New Jersey. He is a Negro, or black.

(b) The defendants have their place of business at 26 Federal Plaza, in the City, County and State of New York, known as Region 2 of the General Services Administration of the United States Government.

(c) Plaintiff was employed in the title and grade of Communications Specialist, GS 7, under the immediate supervision of the defendant, Albert Gallo, Chief, Communications Division, Transportation and Communications Service, Region 2.

Count III

Nature of Proceeding:

This is a proceeding alleging racial discrimination by the defendants Joseph A. Daly, Albert Gallo and Frank A. Lapolla, as the plaintiff's superiors at Region 2 of the General Services Administration. The General Services Administration has been joined as a party defendant be-

cause it tolerated the alleged racial discrimination to exist and to continue to exist, despite the complaints of the plaintiff hereinafter referred to and described. John E. Selbman of the United States Civil Service Commission and the Commission have been joined as party defendants because, in entertaining and ruling upon the plaintiff's complaint of racial discrimination, they acted in an arbitrary and capricious manner by failing to make the in-depth inquiry into the alleged racial discrimination as, under the said Civil Rights Act of 1964 and the Act as amended in 1972, they were required to do. It will not be claimed that the alleged racial discrimination was against Negro employees as a class, but only that it was improperly, unlawfully and illegally exercised against the plaintiff, as a black man with individualistic and distinctive qualities which the defendants found offensive only because the plaintiff is a Negro and black and because such individualistic qualities did not fit the stereotypical qualities which the defendants, who are white, expected in a black man and an American citizen. It is further contended that the conduct of the individual defendants discriminated against the plaintiff racially and in ways which deprived the plaintiff of equal employment opportunities and otherwise adversely affected plaintiff's former status as an employee of the General Services Administration, by delimiting and preventing his promotion in said employment, despite the plaintiff's merit qualifications and his seniority as an employee of the said Governmental agency for upwards of fifteen years.

Plaintiff claims that his denial of promotion was retaliatory in nature and based primarily upon his race and color and attitude of distinctive manliness which in no way detracted from the superior merit of his work.

Count IV

NATURE OF RACIAL DISCRIMINATION:

The particular nature of the racial discrimination here claimed, all to the detriment, deprivation and loss of the plaintiff's civil rights, is that the plaintiff was deprived of merited and earned promotion by the following several circumstances, to wit:

(a) The individual defendants, acting for and in the Communications Division of the Transportation and Communications Service, entered into secret and illegal agreements in and among themselves, to establish a promotional system especially geared to the plaintiff, with the design, intent and purpose which is to continue and preserve, and which has the effect of continuing and preserving an illegal, improper, arbitrary and capricious policy, practice, custom and usage, against the plaintiff of limiting, cutting off, annulling and destroying the promotional opportunity of the plaintiff solely on the basis of his race and color. Those discriminatory policies and practices are described as follows:

(i) In June, 1971, plaintiff, although well qualified and with seniority, was not selected for promotion to the title of GS-9. It is alleged that he was deliberately passed over. At that time, the asserted reason for his non-promotion was that there was a "voice" deficiency, that is, that the plaintiff lacked "voice experience." After plaintiff filed an administrative complaint because of his non-selection for promotion in 1971, he was duped and tricked into believing that "lack of voice experience" was the true, real and genuine reason for his non-selection by the defendant Gallo, and plaintiff discontinued his complaint.

(ii) Thereafter, plaintiff acquired full voice experience and when another opening for the title GS-9 arose, plaintiff applied for said promotion, again, on the basis of his qualifications, his seniority and his acquisition of voice experience. Again, the plaintiff was passed over, with the alleged excuse, reason or subterfuge being given that plaintiff had not been "cooperative" on an occasion wholly unrelated to any performance of his job title or the title of GS-9, which said reason was not a true and genuine reason, but which was advanced and given to cloak and obscure a prohibited discrimination against the plaintiff based solely upon his race and color.

(iii) In June, 1971, when the plaintiff was passed over, or denied the sought promotion to GS-9, the "reason" spuriously advanced at that time was the alleged lack of "voice experience." Nothing was then mentioned about any alleged refusal to perform any assignment although the alleged "failure" to perform was said to have occurred in March, 1971, well before the said June 1971 incident of being "passed over."

(iv) The circumstances of the "passing over," as stated by the defendants, was but a sham, a pretense and a fraud to cover up the racial discrimination then being exerted and practiced against the plaintiff because of the plaintiff's race and color.

(b) Subsequently and by reason of the sham and fraud practiced against the plaintiff, he agreed to undertake further training, having acceptd in good faith the representations of the defendants concerning his experience; he acquired the said experience theretofore alleged to be absent; he acquired further qualifications, including special

educational courses taken at his own expense and upon his own time; the said circumstances, coupled with his long enduring seniority, gave him superior qualifications for promotion to the next vacancy for the title of GS-9.

(c) When said vacancy did in fact occur in 1972, plaintiff was described as "qualified," by reason of the excellence of his professional background and record.

(d) Despite plaintiff's qualifications, a white colleague, with less qualifications and less seniority, was appointed to the vacancy, the title of which the plaintiff had been considered for in 1971 and for which the plaintiff had been induced by lies and racial discrimination to aspire to in the said 1972.

(e) Defendant was "passed over" a second time in 1972, for the false, invented, concocted and pretended "reason" that he lacked certain qualities of cooperativeness and had refused to do certain work when ordered by a superior to do said work. The said sham, pretense and invention advanced as a false reason for disqualifying the plaintiff for the said promotion, was merely the convenient cover-up and camouflage for the wrongful, illegal and improper racial discrimination brought to bear against the plaintiff. In fact and in truth, the genuine and real reason for the plaintiff's failure to be promoted was the sum of the acts of racial discrimination against the plaintiff, all of which are prohibited by the Civil Rights Act of 1964 and the 1972 amendments to said Act and the Civil Rights Act of 1866.

(f) Upon information and belief, the defendants, in their relationships with the plaintiff, invoked antiquarian standards on which approval of the plaintiff would be based; in general, and specifically, with respect to the plaintiff,

the defendants regarded members of the Negro race as inferior and expected from Negroes, a fawning, humble and self-effacing attitude, exhibiting gratitude and cowering timidity in the presence of whites in a superior job position. The plaintiff, on the other hand, is a black citizen who exhibits pride in himself, pride in his abilities, his background and his extensive education and job skills. The defendants construed this attitude to be one of hostile arrogance, instead of pride and the said defendants resented such attitude on plaintiff's part and agreed among themselves to penalize the plaintiff because he possessed racial attitudes and characteristics of individuality and personality which disagreed with defendants' stereotyped attitudes and expectations and the said defendants did in fact and in truth penalize the plaintiff and said penalties of discrimination and preference for others who were less qualified than plaintiff and members of the white race, all to the sore abuse and breach of the said Civil Rights Act of 1964 and the 1972 Amendments thereto, and the Civil Rights Act of 1866, and all to plaintiff's harm, deprivation and proscribed loss and detriment.

(g) In consequence of said conduct, attitude and illegal discrimination on the part of the defendants, acting both together and singly, the plaintiff's career with the United States Government has been forever ruined, after over fifteen years of loyal and skillful service to the United States of America in positions of trust and fidelity, including the loss of opportunities to be advanced on merit in his career of Federal employment. Plaintiff has been further so diminished in his morale that he has been compelled to seek redress of the grievous wrongs done to him and his career by resorting to litigation in this Court, all

of which places a heavy burden upon him and his meager resources and his diminished estate.

(h) The plaintiff's wrongful discharge, occasioned by the wrongdoing and breach of Federal statute as alleged herein, was occasioned by said wrongful and racially discriminatory acts of the defendants and not by reason of any fault or lack on the part of the plaintiff.

Count V

THE ACTS OF THE CIVIL SERVICE COMMISSION:

The particular acts of the United States Civil Service Commission which warrant the relief hereinafter requested and prayed for by the plaintiff, are as follows:

(a) Following the prohibited racial discrimination against the plaintiff in his employment as aforesaid, the plaintiff, pursuant to rules and regulations relating to employee complaints, filed a formal complaint with the General Services Administration, alleging a wrongful racial discrimination against him connected with his employment.

(b) A hearing was held in due course upon such complaint and after the completion thereof, the hearing officer made his findings and recommendations, claiming that there was no racial discrimination, but that the plaintiff had failed to be promoted to GS-9 because of his attitude and not because of any racial discrimination against him.

(c) This finding was an arbitrary and capricious determination and not based upon truth and the facts in dispute and was and is illegal and improper in the following respects, to wit:

(i) The determination arrived at after the said hearing, was a conclusion which had been decided upon prior to the said hearing.

(ii) The said hearing was but a sham and a fraud convened to simulate propriety and allegiance to the law when, in fact, the conclusion had been predetermined and the said hearing was but a form to cloak a decision arrived at prior thereto.

(iii) The hearing officer was not sensitive to the subtle nuances of racial discrimination and the manifold indirect ways of a white society to penalize an individualistic and distinctive Negro.

(iv) The hearing officer accepted as truth and gave probitive value to the rankest kind of hearsay, gossip and untruth in reaching his conclusion, in the absence of sworn testimony to support an otherwise naked conclusion, especially with respect to a witness, Fred Mandato, who testified that certain "incidents" were brought to his attention, concerning the plaintiff; that other "individuals" had mentioned the plaintiff to him critically; that he was "told" that plaintiff had gone to lunch, instead of completing certain work, although he confessed that he had no knowledge of what the plaintiff's superior may have instructed or told plaintiff. Such accumulations of hearsay and gossip in the record were, in sum, a sinister totality, adding to the improper discrimination against the plaintiff and added up to the arbitrariness and capriciousness of the hearing officer in reaching his prohibited determination concerning the plaintiff's complaints. The said hearing officer further allowed in the record and considered against the plaintiff various matters of alleged complaint which occurred long after the critical periods

under consideration, all to the arbitrary and capricious prejudice against the plaintiff. The hearing officer also accepted against the plaintiff, testimony claiming improprieties on the part of the plaintiff, even though there had never been any complaint after such alleged improprieties and nothing appeared in plaintiff's personnel folder relating to such matters, all of which was prejudicial, wrongful, improper, capricious and arbitrary.

(v) The hearing officer employed standards by which he judged the plaintiff which were so subjective as to be vague and improper, such as the claim that the plaintiff had no close friends in his employment, which bore no objective relationship to the plaintiff's abilities and professional competence whatsoever.

Count VI

PLAINTIFF'S ADMINISTRATIVE COMPLAINT:

Within ninety days of the occurrence of the claimed racial discrimination against the plaintiff as herein set forth, plaintiff filed his written charges under oath, alleging a breach of the Equal Employment Opportunity Act and his rights under Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1866.

Under date of December 13, 1972, the said Mr. Selbman of the Civil Service Commission held a hearing on the plaintiff's administrative complaint and, under date of February 9, 1973, the said hearing officer rendered his decision and determination finding that the evidence did not support plaintiff's allegations of racial discrimination and he recommended no corrective action in plaintiff's behalf.

For all of the reasons set forth in Count IV and the preceding Counts of the complaint herein, it is claimed by the plaintiff that the handling of his complaint, the hearing and the determination reached by the hearing officer, were all arbitrary, capricious, illegal and improper and in violation of the spirit, the letter and the remedial intention of the Civil Rights Act of 1964 and the 1972 amendments to the said Act, and the Civil Rights Act of 1866, all to the plaintiff's deprivation of due process and the protections intended and mandated by the said Civil Rights Acts and the plaintiff's employment rights.

Following the receipt by the plaintiff of the advice that his complaint had been dismissed administratively, and within the time permitted by statute, allowing him to institute a civil action for redress of his grievances, the plaintiff has commenced this said civil action.

Although both the City and State of New York have bureaus and departments administering human rights agencies to bar job discrimination, upon information and belief, the Civil Rights Act of 1964 and the 1972 amendment of the act, and the 1866 Act, pre-empt the field with respect to complaints of racial discrimination in federal employment and jurisdiction as heretofore alleged, is conferred upon this Court by federal statute. Furthermore, there is no adequate non-federal remedy. A copy of plaintiff's administrative complaint is annexed hereto as an exhibit and made a part of this complaint.

Count VII

If the relief hereinafter prayed for is not granted, the plaintiff will be irreparably denied rights secured to him by the Civil Rights Act of 1964 and the 1972 amendment

thereof, and the Civil Rights Act of 1866, and he has sustained damages in excess of $10,000.

Plaintiff has no adequate remedy at law to redress the wrongs described above.

WHEREFORE, plaintiff prays as follows: That this Court grant such relief as may be appropriate, including injunctive orders, damages, costs, attorney's fees and back pay.

.....

Plaintiff's Signature

GREENUP and MILLER
Attorneys for Plaintiff
277 Broadway
New York, N.Y. 10007
Tel.: 666-8880

By: .....
A Member of the Firm

Dated:

September 15, 1973.

Order Denying Application to Amend Complaint and Add Parties

September 26, 1973

The within application to amend the complaint and add parties is denied because this action has been dismissed for want of subject matter jurisdiction, and the proposed amended complaint does not change the situation. See memorandum decision of this date granting defendants' motion to dismiss the complaint.

So ordered.

LLOYD F. MACMAHON
U.S.D.J.

U.S. DISTRICT COURT
S. D. OF N. Y.
FILED
Sept. 27, 1973
Paul J. Curran
COPY RECEIVED
September 18, 1973
UNITED STATES ATTORNEY

Judgment Ordering Dismissal

73 Civil 2026 (LFM)

U.S. DISTRICT COURT
FILED
Sep 28 1973
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLARENCE BROWN,
Plaintiff,

—against—

GENERAL SERVICES ADMINISTRATION, UNITED STATES OF AMERICA, TRANSPORTATION AND COMMUNICATIONS SERVICE COMMUNICATIONS DIVISION, REGION 2, JOSEPH A. DALY, REGIONAL DIRECTOR, TRANSPORTATION AND COMMUNICATIONS SERVICE, ALBERT GALLO, CHIEF, COMMUNICATIONS DIVISION, AND FRANK A. LAPOLLA, ACTING CHIEF, COMMUNICATIONS DIVISION, TRANSPORTATION AND COMMUNICATIONS SERVICE, REGION 2,
Defendants.

Defendants having moved the Court to dismiss the complaint for lack of subject matter jurisdiction, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Lloyd F. MacMahon, United States District Judge, and the Court thereafter on September 27, 1973, having handed down its memorandum decision granting the said motion, it is,

Judgment Ordering Dismissal

ORDERED, ADJUDGED AND DECREED, that defendants, General Services Administration, United States of America, Transportation and Communications Service Communications Division, Region 2, Joseph A. Daly, Regional Director, Transportation and Communications Service, Albert Gallo, Chief, Communications Division, and Frank A. Lapolla, Acting Chief, Communications Division, Transportation and Communications Service, Region 2, have judgment against the plaintiff, Clarence Brown, dismissing the complaint.

Dated: New York, N.Y.
September 28, 1973

/s/ RAYMOND F. BURGHARDT
Clerk

Notice of Appeal

(Title omitted in printing)

Notice is hereby given that Clarence Brown, plaintiff in the above styled matter hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 28th day of September, 1973, dismissing plaintiff's complaint for lack of subject matter jurisdiction.

Dated: Oct. 22, 1973

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Certificate of Service

I hereby certify that a copy of this Notice of Appeal was mailed, postage prepaid, addressed as follows:

Paul J. Curran, Esq.
United States Attorney
Southern District of New York

Joel B. Harris, Esq.
Assistant U.S. Attorney

United States Court House
Foley Square

New York, New York 10007
Dated: Oct. 23, 1973

By: .....

Order Allowing Certiorari

SUPREME COURT OF THE UNITED STATES

No. 74-768

CLARENCE BROWN,

Petitioner,

v.

GENERAL SERVICES ADMINISTRATION, et al.

ORDER ALLOWING CERTIORARI. Filed May 27, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second ..... Circuit is granted.

Mr. Justice Douglas and Mr. Justice Marshall took no part in the consideration or decision of this petition.